IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1340 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARAYAN JAGJIVAN PATADIA

Versus

VINODBHAI JAGJIVAN PATADIA

Appearance:

1. Special Civil Application No. 1340 of 1999

MR TUSHAR MEHTA for Petitioner No. 1

MR SHIRISH JOSHI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 01/08/2001

ORAL JUDGEMENT

What is challenged in this petition purporting to be under Article 226 of the Constitution is the order passed by the Gujarat State Cooperative Tribunal (hereinafter referred to as "the Tribunal") dismissing the petitioner's appeal for default on the ground that the petitioner's learned advocate did not remain present

when the matter was called out.

2. It is pointed out by the petitioner that during pendency of the case before the Board of Nominees, the petitioner's learned advocate was appointed as a Judge of the City Civil Court, Ahmedabad about which the petitioner had no intimation. The matter proceeded ex-parte and the Board of Nominees proceeded to pass an ex-parte decree. When the petitioner came to know about the same, the petitioner preferred an appeal before the Gujarat State Cooperative Tribunal. However, when the appeal was fixed for hearing on 6.2.1997, the said date was not recorded by the Clerk of the advocate engaged by the petitioner and, therefore, the learned advocate could not remain present before the Tribunal on 6.2.1997. The Tribunal, therefore, dismissed the appeal for default vide order dated 6.2.1997. The petitioner moved a restoration application which came to be dismissed by the Tribunal on 2.1.1999. Hence, the present petition.

3. In response to the notice, Mr Shirish Joshi, learned counsel appears for respondent No. 1 and submits that the petitioner was never interested in pursuing these proceedings as the petitioner is settled in the USA. It is, therefore, submitted that the petition deserves to be dismissed.

4. Having heard the learned counsel for the parties and considering the fact that the petitioner did not get any decision on merits of the dispute before either of the two fora i.e. the Board of Nominees as well as the appellate Tribunal and for which the petitioner himself could not be held to be responsible, it would be just and proper to set aside the impugned order dated 6.2.1997 passed by the Tribunal in appeal No. 387 of 1984 and the order dated 2.1.1997 passed by the Tribunal rejecting the restoration application.

However, in view of the facts being pointed out by Mr Joshi for respondent No. 1 that the petitioner is settled in the USA and that respondent No. 1 has to spend substantial amounts for contesting the appeal before the Tribunal and this petition and that respondent No. 1 himself is not responsible for any of the lapses which have resulted into ex-parte decisions against the petitioner in the two fora, it would be just and proper to pass a conditional order.

5. It is accordingly directed that impugned order dated 6.2.1997 (Annexure "H") in Appeal No. 387 of 1994 and order dated 2.1.1999 (Annexure "I") passed by the

Tribunal in Restoration Application No. 2 of 1997 shall stand set aside upon the petitioner depositing a sum of Rs.15,000/- (Rupees Fifteen thousand only) with the Registrar of the Gujarat State Cooperative Tribunal by 31.8.2001. If the amount is not so deposited with the Tribunal by 31.8.2001, this petition shall stand dismissed for non-compliance of the condition and the orders of the Tribunal shall become final. As and when the amount is deposited by the petitioner with the Registrar of the Tribunal, respondent No. 1 shall be permitted to withdraw the same by an account payee cheque.

6. It goes without saying that even after the petitioner deposits the amount and appeal No. 387 of 1994 stands restored before the Tribunal, the petitioner and his advocate shall have to cooperate for expeditious disposal of the appeal and in case of any lapse on the part of the petitioner or his advocate on record, the Tribunal may be justified in passing appropriate orders on that occasion. The Tribunal shall hear and decide the appeal as expeditiously as possible and preferably by 31.12.2001.

7. This Court has not gone into the merits of the controversy which are the subject matter of the appeal before the Tribunal or any contentions on merits of the dispute between the parties.

8. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent only.

(M.S. Shah, J.)
sundar/-